

REMARKS

In the Office Action dated April 26, 2004, pending Claims 1-11 were rejected.

Claims 1 is an independent claim; the other claims are dependent claims. The Office is respectfully requested to reconsider the rejections in view of the following remarks.

Applicants and the undersigned are most grateful for the time and effort accorded the instant application by the Examiner. On September 7, 2004, Applicants' counsel and one of the inventors, Kannan Srinivasan, conducted a telephone interview with the Examiner during which the present invention and the Martin et al. reference was discussed. No agreement was reached with respect to the claims.

All pending claims stand rejected under 35 USC 102(e) as being anticipated by Martin et al. (hereinafter "Martin"). Applicants have rewritten Claims 1 and 6 and added new Claims 12-13. Applicants intend no narrowing of the claims by the changes made by this Amendment; it should be noted these amendments are not in acquiescence of the Office's position on allowability of the claims, but merely to expedite prosecution. Reconsideration and withdrawal of the present rejections are hereby respectfully requested.

The present invention broadly contemplates enabling Internet businesses to conduct real-time, online experiments on a sample of transactions and determine marketplace sensitivities. (Page 6, lines 23-25) Analysis of the results of the experiments reveal optimal values of key market decision variables, such as price content of banner ads, promotion levels, quantity discount schemes, etc. (Page 6, lines 25-27)

As best understood, Martin appears to be directed to predicting a web surfer's behavior based on the behavior of past surfers. (Col. 1, lines 7-8) One usage of such a prediction is in one-on-one marketing of products to consumers. (Col. 2, lines 54-55) According to Martin, "proper advertisements, i.e., those that have a high probability of success, are placed in front of the proper surfers" (Col. 2, lines 58-60) "to increase sales, and thereby increase profits". (Col. 2, lines 53-54) As Martin explains, "the desired effect on that surfer's behavior is to have the surfer buy the advertised product, but the present invention is not limited to advertisements. As one example, surfers at a certain website might prefer to link to any number of other websites, and based on the features and behavior of a given surfer, the link displayed (action) can be chosen to maximize the tendency of that surfer to download the displayed link (behavior)." (Col. 8, lines 28-33) Simply stated, Martin is directed to "predicting future surfer behavior [on a website] based on what the surfer has done in the past". (Col. 2, lines 63-65)

The instantly claimed invention requires specifically "determining a probability that a customer will become defunct after a predetermined period of time has occurred since the last interaction of that customer with the web site" (Claim 1; emphasis added) "[A] promotion selected from the set of promotions [is then provided] to a customer if the probability that the customer will become defunct after the predetermined period of time has occurred since the last interaction of that customer with the web site is greater than the permissible defunct threshold." (Id.) In Martin, however, there is no teaching or suggestion of determining a probability that a customer will not return to the web site after a predetermined period (or range) of time has occurred since

the last interaction of that customer with the web site. Indeed, Martin states a problem is that "most Internet users are anonymous" and teaches that "[a cookie] is unlikely to be an effective user identification in the future". (Col. 1, line 30; lines 41-42) As the method of Martin is premised on the inability to determine when a specific customer last visited a web site (including the amount of time that has occurred since the last visit), Martin uses web server logs to identify session patterns and applies those patterns to a given web surfer in a future session. Thus, it is respectfully submitted that Martin falls short of the present invention. Accordingly, Applicants respectfully submit that the applied art does not anticipate the present invention because, at the very least, "[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under construction."

W.L. Fore & Associates, Inc. v. Garlock, 721 F.2d 1540, 1554 (Fed. Cir. 1983); see also In re Marshall, 198 U.S.P.Q. 344, 346 (C.C.P.A. 1978).

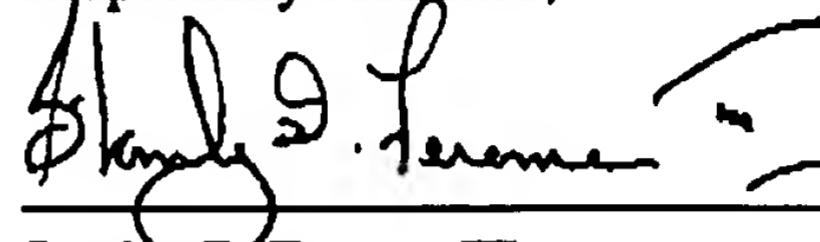
By virtue of dependence from what is believed to be allowable independent Claim 1, it is respectfully submitted that Claims 2-12 are also presently allowable. New independent Claim 13 is a Beauregard claim corresponding to Claim 1, and is also believed to be allowable.

The "prior art made of record" has been reviewed. Applicants acknowledge that such prior art was not deemed by the Office to be sufficiently relevant as to have been applied against the claims of the instant application. To the extent that the Office may apply such prior art against the claims in the future, Applicants will be fully prepared to respond thereto.

Atty. Docket No. 696.005

In summary, it is respectfully submitted that the instant application, including Claims 1-13, is presently in condition for allowance. Notice to the effect is hereby earnestly solicited. If there are any further issues in this application, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,



Stanley E. Ference III
Registration No. 33,879

Customer No. 35195
FERENCE & ASSOCIATES
400 Broad Street
5Pittsburgh, Pennsylvania 15143
(412) 741-8400
(412) 741-9292 - Facsimile

Attorneys for Applicants